



MINISTRY OF LABOUR

WAGES COUNCILS ACT, 1959

Report of a Commission of Inquiry  
on the question whether the Baking Wages  
Council (Scotland) should be abolished



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# WAGES COUNCILS ACT, 1959

## Appointment of a Commission of Inquiry

WHEREAS the Minister of Labour is considering whether he should exercise his powers under Section 4 of the Wages Councils Act, 1959, to make an order to abolish the Baking Wages Council (Scotland).

NOW THEREFORE the Minister in pursuance of the powers conferred upon him by Sections 6 and 9 of, and the Fourth Schedule to, the said Act and after consultation with organisations representing employers and workers respectively in accordance with paragraph 3 of the said Fourth Schedule, hereby appoints the following persons to be members of a commission of inquiry:—

(a) Persons chosen as being independent persons:—

Professor Harold Stewart Kirkaldy, C.B.E., M.A., LL.B.

Professor Archibald Duncan Campbell, M.A.

Dr. Sarah Craig Orr, M.A., Ph.D.

(b) Persons chosen to represent employers:—

Mr. William Lauchlan Armstrong.

Mr. Barclay Clibborn Walker.

(c) Persons chosen to represent employed persons:—

Mr. John Irvine.

Mr. Francis Henderson Stephen.

AND the Minister further appoints Professor H. S. Kirkaldy to be chairman of the said commission and Professor A. D. Campbell to act as deputy chairman in the absence of the chairman;

AND the Minister in pursuance of the provisions of the said Section 6 hereby refers to the said commission the question whether the said Wages Council should be abolished.

Dated this 1st day of December, 1961.

L. N. HELSBY,

*Secretary,*

*Ministry of Labour.*



THE RIGHT HONOURABLE,

THE MINISTER OF LABOUR.

SIR,

On 1st December, 1961, we were appointed under the Wages Councils Act, 1959, to be members of a Commission of Inquiry to report on the question whether the Baking Wages Council (Scotland) should be abolished.

We now have the honour to submit to you the following Report.

### INTRODUCTORY

1. Notice of our intention to make this inquiry was published in the London and Edinburgh Gazettes on 9th February, 1962, and a copy of that Notice was sent to organisations likely to be interested in the Inquiry. We met in Edinburgh and Glasgow on five occasions and heard oral evidence on one occasion. A list of organisations and persons with whom we have had correspondence, or who have given oral or written evidence in the course of our inquiry is given in Appendix I to the Report.

### HISTORICAL

2. We received a memorandum from the Ministry of Labour on the circumstances leading to the establishment of the Baking Trade Board (Scotland) which was the predecessor of the present Wages Council. We were informed that the establishment of the Baking Trade Board (Scotland) in 1939 was consequential upon the decision to establish a Trade Board for the baking industry in England and Wales. Consultations which followed the publication of the Report of the Departmental Committee on Night Baking (the Alness Report) in 1937, made it clear that there was then no adequate machinery for the effective regulation of wages throughout the baking industry in England and Wales, and representatives of both sides of the industry agreed that a Trade Board should be established for the baking industry in England and Wales. This was done in June, 1938. It was recognised from the start that the conditions found in England and Wales did not exist in Scotland, where employers and workers were well organised, and the Ministry of Labour at this stage assumed that there would be no difficulty in providing for the statutory regulation of wages of bakery workers in England and Wales only. Talks were held with representatives of employers and workers in the Scottish baking industry in Edinburgh in November, 1937, at which the Ministry representatives stressed their wish that wages and conditions of work in the industry should be regulated by voluntary action. Representatives of the Scottish Association of Master Bakers and of the Scottish Union of Bakers, Confectioners and Bakery Workers expressed the view that the voluntary machinery in the industry should continue with as little Government interference as possible provided that voluntary agreements were effectively observed. The Conference accordingly agreed that both sides of the industry should give further consideration to the development of voluntary machinery.

3. Soon after this conference, however, the Ministry was advised that under the Trade Boards Acts, 1909 and 1918, a Trade Board could not be established in relation to workers in England and Wales engaged in a specific trade

unless workers in Scotland engaged in the same trade were also either brought within the scope of the proposed Trade Board or within the scope of a separate Trade Board covering the trade in Scotland. The Ministry therefore informed the Scottish baking industry that, although it remained desirable to strengthen the industry's voluntary negotiating machinery, there was no alternative but to set up a Trade Board for Scotland. The Ministry of Labour informed us that in replying, the Scottish Association of Master Bakers confirmed their opposition to the establishment of a Trade Board and the Scottish Union of Bakers, Confectioners and Bakery Workers made it clear that their main concern was that voluntary agreements could be legally enforceable and they were prepared to accept the establishment of a Trade Board provided that it was associated with voluntary collective bargaining. Further consultations with the Association and the Union took place in which the implications of the establishment of a Trade Board for the Scottish baking industry were examined and the proposal for its establishment was accepted. The Minister of Labour accordingly made the statutory order establishing the Baking Trade Board (Scotland) on 6th February, 1939.

4. Under the Wages Councils Act, 1945, which repealed the Trade Boards Acts, 1909 and 1918, Trade Boards were converted into Wages Councils. The new Wages Councils continued to exercise the powers and functions formerly exercised by the Trade Boards, with certain additional powers, and the Minister of Labour was empowered to establish by order Wages Councils to operate in respect of "the workers described in the order and their employers". The Trade Boards Acts, 1909 and 1918 had provided that Trade Boards should operate in respect of "trades", and the Ministry informed us that it is advised that one of the results of the changes made by the 1945 Act is to permit Wages Councils to operate in respect of workers employed only in certain parts of Great Britain.

5. The Wages Councils Act, 1945, was extended in certain respects (not relevant in the present context) by the Wages Councils Act, 1948, and by the Terms and Conditions of Employment Act, 1959. The Acts relating to the Wages Councils were consolidated in 1959 by the Wages Councils Act, 1959, which repealed the Wages Councils Acts, 1945 and 1948, and those provisions of the Terms and Conditions of Employment Act, 1959, which related to Wages Councils.

#### **SCOPE OF THE BAKING WAGES COUNCIL (SCOTLAND)**

6. The Wages Council operates in respect of workers employed in Scotland in the baking trade as defined in the Appendix to the Trade Boards (Baking) Order, 1938 (see Appendix II). Workers engaged in making all articles of food are in scope of the Wages Council when such work is done in an undertaking or a branch or department which is mainly engaged in the making of bread, pastry or flour confectionery. Workers engaged in the sale or distribution of the products of the trade are excluded unless they are also engaged in baking operations during the same week. Workers engaged in the making of biscuits are also specifically excluded when such work is the main work of an undertaking or branch or department of an undertaking. Workers engaged in baking in a hotel, boarding house, restaurant or similar establishment or by a railway undertaking for use in the ordinary way by the establishment or undertaking are excluded, as well as those engaged in making meat pies and similar articles when that is the only baking done.

## CONSTITUTION OF THE WAGES COUNCIL

7. The Council as constituted at present consists of three Independent Members, fourteen employers' representatives and fourteen workers' representatives. Nominations to the employers' side are obtained from the Scottish Association of Master Bakers (7), the Wholesale and Retail Bakers of Scotland (3), the Parliamentary Committee of the Co-operative Union Limited (3), and the Cake and Biscuit Alliance Limited (1—jointly with the National Association of Biscuit Manufacturers). Nominations to the workers' side are obtained from the Scottish Union of Bakers and Allied Workers (12) and the Union of Shop, Distributive and Allied Workers (2).

## ENFORCEMENT OF WAGES REGULATION ORDERS APPLICABLE TO THE SCOTTISH BAKING INDUSTRY

8. We obtained from the Ministry of Labour details of the observed infractions of Wages Regulation Orders in the Scottish Baking industry. From these details we conclude that the proportion of underpayments is similar as between Federated (i.e. parties to the National Working Agreement) and non-Federated firms, and is in the most recent years significantly less than the average for all Wages Council trades, although of course we have not had an opportunity of comparing the structure of the other Wages Council trades with that of the Baking Wages Council for Scotland.

## STRUCTURE OF THE SCOTTISH BAKING INDUSTRY

9. The only available statistics relating to the structure of the industry before the war as submitted to us by the Ministry of Labour show that in 1937 there were about 3,250 small retail bakehouses, employing from 1 to 4 workers in each establishment; about 500 larger retail bakehouses employing 5 or more workers each; and about 300 wholesale bakehouses (plant bakeries). It was then estimated that there were approximately 15,000 workers in the trade.

10. Since 1937 there has been a marked decline in the number of small bakeries. The statistics supplied to us by the Ministry of Labour on the basis of records maintained by the Wages Inspectorate, show that in 1961 there were about 1,000 small retail establishments employing from 1 to 5 workers in each establishment; about 400 establishments each employing between 6 and 20 workers, and about 130 bakeries employing more than 20 workers. There are now approximately 15,800 workers in the trade. A high proportion of the total number of workers in the industry are employed by a comparatively small number of the larger bakeries. Large bakeries each employing over 50 workers constitute only 4 per cent. of the total number of bakeries, but employ 45 per cent. of the total number of workers in the trade. Small bakeries each employing under 6 workers constitute 64 per cent. of the total but altogether employ only 15 per cent. of the workers in the trade. The statistics do not include small bakeries operating without employees, since these establishments are outside the scope of the Council.

11. Prior to the 1914-18 war most bread came from small bakeries and bread-making was done largely by hand. During the inter-war years mechanisation developed in many of the larger bakeries and has further developed since the last war. There is at present a distinct division between the production of bread in large plant bakeries and the production of bread and flour confectionery in the smaller establishments. In Scotland today the plant bakeries produce practically all the batch bread and most of the "pan".

i.e. tinned bread. The medium sized bakeries make a smaller quantity of tinned bread in addition to hand-made bread and fancy bread. The small bakeries concentrate their bread production almost entirely on hand-made bread and fancy bread. The medium sized and small bakeries also make large quantities of bakery products other than bread including rolls, hot plate goods, meat pastry products and the various types of flour confectionery such as cakes.

12. The plant bakeries are located mainly in seven centres of population—Glasgow, Edinburgh, Dundee, Aberdeen, Dunfermline, Inverness and Perth. The 426 smaller bakeries (i.e. bakeries employing 1-5 workers) which are not parties to the National Working Agreement (see paragraph 18 below) are located throughout the country, but approximately 300 of them are in the larger towns or the more populous country areas.

## **ORGANISATIONS WITHIN THE INDUSTRY**

### **Employers' Organisations**

13. The employers' organisations and the Co-operative Union Ltd. (Scottish Section) cover all the larger establishments. The Wholesale and Retail Bakers of Scotland is an association which represents about 20 of the plant and larger family businesses, and each member of this organisation is also a member of the Scottish Association of Master Bakers. The Co-operative Union (Scottish Section) covers the Scottish Co-operative Societies engaged in the production of bread. Flour confectionery and biscuit makers are represented by the Cake and Biscuit Alliance and the National Association of Biscuit Manufacturers.

14. The Scottish Association of Master Bakers covers the majority of the independent bakers in all sections of the trade, in addition to those members who also belong to the Wholesale and Retail Bakers of Scotland. A number of bakeries, estimated at 34 per cent. of the total number of establishments in the industry, are not members of any employers' association. These bakeries do not include any of the larger establishments and most of them are small home bakeries, many of which do not employ labour.

15. The Scottish Association of Master Bakers informed us that their percentage membership was much lower at the present time than it had been in 1952, but the proportion of firms recorded by the Ministry of Labour as subscribing to the National Agreement has not changed since 1957.

### **Workers' Organisations**

16. There are two Unions operating in the industry, the Scottish Union of Bakers and Allied Workers and the Union of Shop, Distributive and Allied Workers. The former union has by far the greater membership amongst the workers in the industry. Their representatives said that they always claimed a membership of 98 per cent. of the workers in the industry though they also stated that their membership might fall below that percentage at the present time.

### **Voluntary negotiating machinery in the industry**

17. The National Joint Committee for the Scottish Baking Industry has for several years been the national body for the negotiation of wages and conditions of work in the Scottish baking industry. The National Joint Committee was set up following the signing in November, 1944 of a National Agreement between the Scottish Association of Master Bakers, the Scottish

Co-operative Wages Board, the Federation of Wholesale and Multiple Bakers (Scottish Area) and the Glasgow and West of Scotland Master Bakers' Association on the one side, and the Scottish Union of Bakers, Confectioners and Bakery Workers (now the Scottish Union of Bakers and Allied Workers), on the other side. There were already at that date a number of local agreements in various parts of Scotland which provided more favourable wages and conditions than those prescribed by the Baking Trade Board (Scotland). The National Joint Committee was created "to give consideration to all matters appertaining to the organisation and development of the Bread, Cake and Flour Confectionery Industry in Scotland as may be of common interest to the parties or may be referred to it by any of them; to establish procedure for the avoidance and/or settlement of disputes between employers and workpeople or any section of them; to regulate wages and working conditions throughout the industry in Scotland, as represented by the parties, on a national basis". The parties to the National Agreement at present are the Scottish Association of Master Bakers, the Co-operative Union Limited (Scottish Section) (formerly the Scottish Co-operative Wages Board), and the Wholesale and Retail Bakers of Scotland (formed by the amalgamation of the Federation of Wholesale and Multiple Bakers (Scottish Area) and the Glasgow and West of Scotland Master Bakers' Association) on the one side, and the Scottish Union of Bakers and Allied Workers on the other side.

18. The National Joint Committee has negotiated successive National Working Agreements relating to terms and conditions of employment, including provisions relating to night work and shift work which are outside the competence of the Wages Council, and from time to time issues amendments to the Agreement in respect of wage increases. The issue of amendments for wage increases has usually been followed after an interval of from about four to six months by the submission to the Wages Council of motions for similar increases. These motions for wage increases have in recent years normally been carried without amendment by the Wages Council and published as proposals of the Wages Council in accordance with the procedure laid down in the Wages Councils Act, 1959. The Wages Council's proposals have subsequently been embodied in wages regulation orders made by the Minister and enforced by the Ministry's Wages Inspectorate.

## **ADEQUACY OF THE VOLUNTARY NEGOTIATING MACHINERY**

### **Joint Statement by the Employers' and Workers' Organisations**

19. We received a joint statement from the Scottish Association of Master Bakers, the Co-operative Union Ltd. (Scottish Section), the Wholesale and Retail Bakers of Scotland, the Scottish Union of Bakers and Allied Workers, and the Union of Shop, Distributive, and Allied Workers (Scottish Division), in which they set out their reasons for supporting the retention of the Wages Council, and later heard oral evidence from employers and workers separately.

20. Employers and workers stated that although they had made considerable progress in their industrial relations, they did not consider that the point had been reached where wages and conditions of employment could be regulated by voluntary agreement alone. They recalled that after an inquiry in 1952 into the possibility of abolishing the Wages Council, the Minister of Labour at that time had decided to leave matters as they were. In their opinion, the factors which had influenced that decision were now much more strongly in favour of the retention of the Council.



21. The parties stated that the statutory regulation of wages and conditions in the industry had contributed in a large measure to the undisturbed industrial peace which had characterised the industry since 1940, but they had no doubt that this peace would have been disturbed on many occasions if the statutory orders had not existed. Statutory regulation had enabled the industry to develop its organisation and the National Joint Committee had established a National Working Agreement which covered a very large proportion of the workers in the industry, but which they felt was not adequate for the purposes of the Wages Councils Act, 1959, since the Agreement would be weakened without the protection of the Wages Council. Small bakeries could be started with very little capital outlay in parts of the country where it was difficult to organise small units and where, in the absence of alternative employment, workers might be compelled to accept lower wages and longer hours. Not all master bakers were members of Master Bakers Associations, and non-membership was more common among small bakeries. The percentage membership of the Scottish Association of Master Bakers was in fact much lower now than in 1952. They estimated that there were at present in Scotland 545 bakeries not covered by the voluntary Agreement and believed that these bakeries employed between 1,500 and 2,000 workers. Workers in such establishments were not necessarily trade union members, and those who were not would have no protection in the absence of the Wages Council. The parties feared that some employers who were reluctant parties to the Agreement might secede from it in the absence of the Wages Council. Even among employers who were parties to the Agreement instances occurred where its terms were not being fully implemented, and the main deterrent against major violation of its terms was that this would also be a violation of the statutory order. Although some of the workers in bakeries which were not parties to the Agreement were trade union members, the Union was not satisfied that they could settle problems arising from the enforcement of the Agreement, particularly in rural areas, and trade union measures to do so might disturb the industrial peace.

22. The parties drew attention to the historical background of the industry and referred to the price-cutting from which the industry had suffered in the late 1920s and throughout the 1930s. Whilst price reductions were not undesirable, they should not be achieved at the expense of the quality of ingredients or of the fair wages and conditions of the workers, as had happened during those years. Local agreements had existed then, but they had not been honoured by some employers, and in view of this the Alness Report had called for protective legislation.

23. The parties did not concede that the Wages Council was used solely to provide an extension through statutory machinery of voluntary agreements. It was submitted, however, that even if this were the case, it would not be contrary to the provisions of the Wages Councils Act, 1959, and was, moreover, an established practice in a number of industries covered by Wages Councils. They would hesitate to accept the machinery provided by Section 8 of the Terms and Conditions of Employment Act, 1959, for enforcing the agreed wages and conditions of employment as a suitable substitute for the Wages Council, as it would only be resorted to as a result of industrial strife. The parties had no doubt that many claims would have to be reported for determination under the Act and this would result in a much heavier burden on the taxpayer than that incurred by the Wages Council. Moreover, the parties maintained that the cost of inspection would not be reduced by the abolition of the Council, as the Wages Inspectors would continue to be responsible under the Baking

Industry (Hours of Work) Act, 1954, for the inspection of bakeries which were not parties to the Agreement and that responsibility would be increased if, as they were confident would be the case, employers seceded from the Agreement on the abolition of the Council. The operation of the Baking Industry (Hours of Work) Act, 1954, appeared to support their view that the coverage of the Agreement was inadequate.

24. Employers and workers were agreed that the existence of more than 1,500 workers employed in establishments not covered by the Agreement, with the expectation that their numbers would increase if the Wages Council were abolished, was sufficient to justify the existence of the Wages Council. They considered that in the event of abolition the industry would be exposed to price wars based on wage cutting which would imperil the position of the organised section of the industry, and that the voluntary machinery would thereby be shown to be less than adequate to justify the Council's abolition.

### **Oral Evidence from the Employers' Organisations**

25. The representatives of the employers' organisations which are parties to the National Joint Council gave oral evidence which supplemented the information contained in the joint written statement summarised above. They reiterated the view that without statutory enforcement of wages rates the National Working Agreement would be seriously undermined, and the representative of the Scottish Association of Master Bakers stated that certain of their members were reluctant parties to the Agreement. He stated that their membership had dropped from about 1,500 baker members in 1951 to just over 900 at the present time, and attributed the decline to economic factors. The decline in the percentage of employers belonging to the Association since 1952 was attributed to the reluctance of some members to observe the extensive conditions laid down in the National Working Agreement. They agreed, however, that the decline would be smaller if it were measured not by the number of bakeries in membership but by the number of workers employed in bakeries in membership. The great majority of the firms not in membership today were the smaller type of home bakery many of whom did not employ labour.

26. We were informed that when wages were increased by agreement before statutory rates were increased most employers paid the increased rates from the date prescribed in the Agreement. In cases where members declined to do so, the case would probably be raised by the trade union side in the National Joint Reference Committee, and in this event most members paid. If they refused to do so, they would be liable to be dismissed from the Association and there might also be action by the trade unions. The representatives did not consider that employers would necessarily derive advantage by declining to adhere to the National Working Agreement and thus paying lower rates during the interval between the effective date of the Agreement and that of the subsequent wages regulation order, because adherence to the National Working Agreement gave exemption from the main provisions of the Baking Industry (Hours of Work) Act. We were informed that the conditions provided under the National Working Agreement, particularly in regard to the permitted hour for starting work, were of great advantage to the small baker. The point was, however, made that there was a tendency for the extent of nightwork in the industry to decline and that the importance of the advantages at present obtained by employers in regard to starting hours under the Agreement might tend to decline in comparison with wage costs. We were informed that although

the industry was capable of enforcing the Agreement in respect of hours of work, it would have much more difficulty in enforcing wages.

27. Some employers pay rates higher than the statutory minimum, more often in the smaller family bakeries than in the large ones, but this was gradually becoming less common as employers found increasing difficulty in paying higher wages.

28. The representatives did not dissent from the view that the intention underlying the legislation concerning statutory wage regulation was to enable employers and workers to develop adequate voluntary negotiating machinery to the stage where it could function without the help of statutory regulation. They did not however think that this stage had been reached and were unable to give any indication of when it was likely to be reached.

29. The representatives of the Scottish Association of Master Bakers agreed that the abolition of the Wages Council would necessitate an increase in the staff of the Association.

### **Oral Evidence from the Workers' Organisations**

30. The representatives of the Scottish Union of Bakers and Allied Workers gave oral evidence which supplemented the information given in the joint written statement summarised above. The representatives explained that their evidence would cover the views of the Union of Shop, Distributive and Allied Workers (Scottish Division), who were also signatories of the joint statement but were not parties to the National Working Agreement. In their evidence the Union emphasised that owing to the structure of the industry the removal of statutory control might well compel workers in country areas to accept unfavourable conditions, such as had been experienced in the industry in the years preceding the establishment of the Baking Trade Board (Scotland). They stated that competition was even keener today than it had been in those years as a result of the expansion of the large plant bakeries, and that as a result many bakeries in membership of the Scottish Association of Master Bakers were experiencing economic difficulties. In these circumstances the development of the voluntary machinery and the National Working Agreement might well be endangered without the statutory basis afforded by the Wages Council.

31. We were informed that although the Union usually claimed that 98 per cent. of the workers in the industry were members, the percentage might fall below that. The representatives agreed that the proportion of organised workers in the industry was very high, but attributed this to the provision in the National Working Agreement requiring the employment of trade union members.

32. The representatives detailed their criticisms of the machinery provided under the Terms and Conditions of Employment Act. A considerable number of "claims" would have to be reported under the Act and the abolition of the Wages Council would result in friction and disputes in the industry. Moreover in the absence of statutory regulation workers in some country districts might prefer to accept wages lower than the agreed rates in order to retain their employment, and in such cases the Union would have difficulty in ascertaining the facts of the situation, which would have to be established before action could be taken to report a "claim". The representatives considered that previous experience showed that union activity could not prevent wage cutting of the kind referred to.

### **Oral Evidence from the Independent Members of the Baking Wages Council (Scotland)**

33. The Independent Members of the Baking Wages Council (Scotland) informed us in oral evidence that normally they were not called upon to vote or to exercise any conciliatory functions. Many of the Council meetings lasted a very short time, and on the few occasions when the Independent Members had taken an active part, their functions had not been of the kind usually undertaken by Independent Members at meetings of Wages Councils as they had been primarily engaged in assisting the Secretary to put a provision already included in the National Working Agreement into a form suitable for incorporation in wages regulation proposals. The Independent Members could recall only two occasions in the last ten years when their functions had been similar to that normally performed by Independent Members and neither of these occasions arose from a dispute concerning wages. Judged by the importance of the decisions actually taken at Council meetings, the Council had outlived its usefulness. The main purpose in having the Council appeared to be that it made the services of the Wages Inspectorate available to enforce the agreed rates on employers who were not parties to the National Working Agreement.

34. In discussion concerning the information assembled by the Wages Inspectorate on the infractions of the wages regulation orders applicable in the industry, the Independent Members suggested that infractions might partly be attributable to the complexity of the orders and the fact that the minimum rates prescribed were higher than those fixed by any other Wages Council.

### **Oral Evidence from the Ministry of Labour**

35. We received oral evidence from a representative of the Ministry of Labour. We were informed that since 1918 the policy of successive Governments had been that the most suitable means of determining the wages and conditions of employment was voluntary negotiating machinery and that statutory wage fixing bodies such as Wages Councils were exceptional expedients to cover industries where the organisation of employers and workers was weak. The Minister had appointed a Commission to enquire into the Council because there seemed to be grounds for considering that organisation in the industry was sufficiently strong to enable the industry to rely exclusively on its voluntary negotiating machinery for the determination of wages and conditions of employment.

36. We were informed that there were a few Councils which generally met to consider motions which had previously been agreed in preliminary informal discussions. Most of these cases were however different from that of the Baking Wages Council (Scotland) in that the employers and workers covered by the preliminary discussions covered only a minority of the people in the industries concerned. The Ministry regarded Wages Councils as a means of helping industries to develop their negotiating machinery under the guidance of Independent Members and it was consequently to be expected that there might well be a period during which voluntary machinery would operate concurrently with the Wages Council concerned. This situation had in fact occurred in a number of industries which had set up Joint Industrial Councils since the war, and the Ministry saw no objection to it as a transitional arrangement, but could not regard the arrangement as satisfactory when it continued over a considerable period. The purposes of the Wages Councils Act, 1959, were not being properly fulfilled when

statutory enforcement was regularly being sought for terms and conditions of employment in whose determination the Independent Members, provided for in the Act, had taken no part.

37. We were informed that since the last war eight Wages Councils (Furniture Manufacturing, Tobacco, Rubber Reclamation, Chain, Rubber Manufacturing, Drift Nets Mending, Fustian Cutting, and Tin Box) had been abolished and that in all cases abolition had followed a joint application from organisations representing the employers and workers concerned. The Ministry did not obtain information about the degree of organisation in the industries in respect of which these joint applications had been made, and this information was available in respect of the Scottish baking industry only because the Baking Industry (Hours of Work) Act, 1954, made it necessary for the Ministry to record the names of employers who were parties to the National Working Agreement. These records showed that rather more than 60 per cent. of the employers were parties to the Agreement and that these employers employed about 90 per cent. of the total number of workers in the industry. The Ministry representative explained that most industries gave information about their degree of organisation only in confidence, but referred to two which had satisfactory voluntary machinery and where the employers who were parties to the Agreement were thought to employ a good deal less than 90 per cent. of the total labour force. The Ministry was not aware of any secessions from the voluntary machinery operating in those industries whose Wages Councils had been abolished since the war.

38. The Ministry did not consider that there was any intermediate course between that of abolishing the Council and that of permitting its continuation in its present form. We were informed that in the event of the abolition of the Wages Council workers not at present covered by the voluntary agreement would have the protection of the Union and could take advantage of the procedure provided by the Terms and Conditions of Employment Act, 1959 for referring claims to the Industrial Court.

39. We enquired about the effect of the determination of a claim brought before the Industrial Court under the Terms and Conditions of Employment Act. We were informed that if a Trade Union brought a claim before the Court on the grounds that a particular employer was failing to observe the recognised terms and conditions established by agreement between parties representing a substantial proportion of the employers and workers in the trade and satisfied the Court that the claim was well founded, the Court's award requiring the employer to observe the recognised terms and conditions was legally binding only on the employer in respect of whom the claim was made, but that other employers might thereby be persuaded to follow suit. The Industrial Court was usually ready to meet anywhere in the country to suit the convenience of the parties, with the object of keeping the parties' expenses as low as possible.

## OTHER WRITTEN EVIDENCE

40. We received written representations from six employers opposing on religious grounds the abolition of the Baking Wages Council for Scotland. Their representations did not appear to us to come within the statutory criteria laid down by the Wages Councils Act, 1959 for determining the matters referred to us by our terms of reference.

## COMMENTS ON THE ADEQUACY OF THE VOLUNTARY NEGOTIATING MACHINERY

41. We have carefully considered the written and oral evidence submitted to us and have taken full account of all the points which have been made. In the light of the evidence it is our duty to form our opinion whether it is expedient that the Baking Wages Council (Scotland) should be abolished, having regard to the extent to which there is, and is likely to remain, adequate voluntary machinery for the effective regulation of the remuneration and conditions of employment of workers within the Council's field of operation.

42. In giving our opinion on the question before us it will be convenient to distinguish between the adequacy of the voluntary machinery as a means of negotiating voluntary agreements and its adequacy as a means of securing the observance of those agreements when negotiated. The evidence given by the Independent Members and by employers and workers showed that the National Joint Council for the Baking Industry constitutes adequate negotiating machinery and we are all agreed that there is no doubt of the adequacy of the National Joint Council as a means of negotiating voluntary agreements concerning remuneration and conditions of work.

43. A further question which we have to consider in forming our opinion on the adequacy of the voluntary machinery is its effectiveness as a means of securing the observance of the voluntary agreements which have been negotiated. We have found this a more difficult question to resolve and we have to report, with regret, that we were unable to reach a unanimous opinion on the matter. The particular issue on which we have failed to reach unanimity turns on the position of the workers who are not covered by the voluntary negotiating machinery.

44. From the evidence we received it appears that at establishments about which information is available some 1,425 workers, or about 9 per cent. of the total labour force of about 15,800 are employed at establishments which are not parties to the Agreement. We have also been informed by the parties to the Voluntary Agreement that they are apprehensive at the possibility of further workers being removed from the scope of the machinery in the event of the abolition of the Wages Council. In considering this situation, five of us are of opinion that the proportion of the industry's total labour force who are covered by the voluntary machinery is a crucial factor in assessing its adequacy. Two of us, however, consider that the structure of the Scottish baking industry is such that the magnitude of the proportion of the total labour force covered by the voluntary machinery is not a crucial factor in assessing its adequacy and that the voluntary machinery cannot be considered adequate for securing the observance of agreed rates and conditions while any significant number of workers remains outside its scope.

### Views of the Majority of the Commission

45. Those of us who consider the extent of the coverage of the voluntary machinery a crucial factor in determining its adequacy think it right to have regard to the situation obtaining in other industries where the voluntary machinery is regarded as adequate by the parties concerned. We realise that the Scottish baking industry differs from many others in that it includes a large number of small establishments distributed throughout the country, but we do not consider that it is unique in this respect or that

this situation is one which renders impossible any comparison with other industries. While precise information is not readily available about the proportion of workers covered by the voluntary machinery in particular industries, we are confident, both in view of information given by the Ministry of Labour and of our own experience, that the proportion of workers at present covered by the voluntary negotiating machinery in the Scottish baking industry is at least as high as in other industries where the adequacy of the voluntary machinery is not in question. The fact that a small proportion of the workers in an industry are outside the scope of its voluntary negotiating machinery seems to us to be a normal situation in many industries covered by voluntary negotiating machinery, and we do not regard this situation in itself as one which would rightly lead us to the conclusion that the voluntary negotiating machinery is inadequate. To reach such a conclusion would in our view logically imply that the voluntary negotiating machinery in most industries is inadequate, and we do not think this a tenable view. Certainly if this view were generally accepted there would be little possibility of achieving one of the main objects of Wages Councils legislation, which is to abolish statutory regulation in favour of voluntary negotiating machinery when this has reached a stage of development comparable with that of industries which rely solely on voluntary negotiating machinery for the determination of terms and conditions of employment.

46. In considering the adequacy of the voluntary negotiating machinery we have considered not only its present position but also its likely development in the event of the abolition of the Baking Wages Council (Scotland). It was represented to us very strongly that in the absence of the Wages Council many employers, and particularly the smaller ones, who are at present parties to the National Working Agreement would withdraw from it when no longer required to observe its terms as embodied in wages regulation orders. We have given most careful consideration to these views, but are bound to record our view that we consider the parties to have been unduly pessimistic in their forecasts on this matter. We would not of course assert that withdrawals from the Association would not occur in the event of the abolition of the Council, but it seems to us unlikely that they would be sufficiently widespread to jeopardise the effective working of the industry's voluntary negotiating machinery. In reaching this conclusion we have been influenced, among other considerations, by the fact that the employers stated in their evidence that exemption from the main provisions of the Baking Industry (Hours of Work) Act, 1954, which is afforded by adherence to the Agreement is a valuable advantage for employers and particularly for the smaller employers. The smaller employers are the employers whose secession from the Agreement the parties considered most likely, but this view seems to us to underestimate the importance of the advantage to which the employers referred. Moreover, we did not consider fully justified the fear expressed by the parties that in the absence of statutory regulation the smaller employers would be able to pay wages lower than those provided in the Agreement and thus threaten the agreed rate. Employers and workers in their evidence agreed that the payment of wages above the agreed rates tended to be encountered mostly in certain country districts where suitable workers required additional inducements to remain. Payment above the agreed rates may not be a widespread practice amongst country employers, but the fact that the practice exists at all suggests that there are fairly narrow limits to the extent to which the smaller country bakers could pay wages lower than the agreed rates and succeed in retaining their labour. As

regards the danger that any wage undercutting which might occur might jeopardise the maintenance of the voluntary machinery, we regard this danger as remote. The voluntary machinery draws its strength from the fact that it covers the large plant bakeries, where the Union is very well organised and can maintain its organisation. The competitive advantage enjoyed by these bakeries as compared with the smaller ones, which is clearly demonstrated by the continuous decline in the total number of bakeries, seems to us so strong that it would not be seriously threatened by wage cutting by the smaller employers (even if this were resorted to), and the rates which the plant bakeries could afford to pay would be determined by their competitive position.

47. The preceding paragraph sets out the considerations which have influenced the majority of us in forming the opinion that in the event of the Council's abolition the adequacy of the voluntary machinery would be unlikely to be impaired because a small proportion of the workers are outside its scope. We think that this would be a reasonable view even if we were to accept fully the contention of the parties that the Terms and Conditions of Employment Act, 1959 would not be a satisfactory means of securing the observance of the terms of the Agreement. However, it seems to the majority of us that the parties have perhaps unduly underrated the efficacy of the machinery for securing the observance of agreed rates which are available to them under the Act. While we recognise that the determinations of the Industrial Court in cases submitted to it under the Act are binding only on the specific employer in relation to whom a claim is made, we do not accept the view that separate cases would necessarily have to be submitted in respect of every employer who originally failed to pay the agreed rates before the employers concerned agreed to do so. It has to be borne in mind that the Minister is empowered by the Terms and Conditions of Employment Act, 1959, himself to take steps to secure a settlement of the claim. No doubt many of the cases (assuming they had not been settled under the agreed procedure of the National Agreements for the Scottish Baking Industry or concerned employers not parties to the Agreement) could be settled by the intervention of the Ministry's Industrial Relations Officers without even going before the Industrial Court. Moreover, the Industrial Court is ready to travel and the parties should not be put to undue inconvenience or expense in submitting claims. As to the suggestion that recourse to the Industrial Court would be the outcome of a situation of industrial strife, we think that account should be taken that claims are likely to be submitted only of the small proportion of workers whose employers are not parties to the Agreement and are paying less than the agreed rates. Bearing in mind the foregoing considerations and the history of industrial peace over many years which has characterised the industry, there seems no good reason to suppose that relations between employers and workers in the industry generally would be prejudiced by the removal of statutory wage regulation.

48. A further consideration which has led the majority of us to the view we have expressed about the adequacy of the voluntary machinery is that the parties appeared to us to be unduly pessimistic about the extent to which they could maintain, or indeed extend, the observance of their voluntary agreement through their own efforts. Given the already high degree of organisation on both sides of the industry, and the admitted advantage to smaller employers of adherence to the Agreement, we consider that the parties have a very good basis on which to extend their organisation to cover the employers and workers at present unorganised.



49. It appeared to the majority of us that an important point of principle arises in regard to the attitude of the parties to the National Working Agreement in pressing for the retention of the Wages Council. The Wages Council and the machinery of enforcement under the Wages Councils Act are used by them entirely as a means of enforcing on the industry as a whole the agreements they have arrived at independently of the Wages Council. In arriving at this result the independent members of the Wages Council are called upon to play no part. The attitude of the parties may therefore be stated, plainly and simply, as asking for statutory enforcement of their voluntary agreements. In our opinion, this is not a procedure which Parliament has provided for by means of the Wages Councils Act. The appropriate procedure laid down by Parliament in such a case is that contained in section 8 of the Terms and Conditions of Employment Act, 1959.

#### **Views of the Minority of the Commission**

50. The members of the Commission who were unable to accept the majority view about the adequacy of the voluntary machinery did not consider that the extent of the coverage of the voluntary machinery was a relevant factor in assessing its adequacy. They agreed that the voluntary machinery was adequate in respect of the section of the industry which it covered, but were seriously concerned about the position of 9 or 10 per cent. of the workers who are outside the scope of the voluntary machinery. They considered that these workers would be completely unprotected in the event of the abolition of the Council and did not accept the view that the Terms and Conditions of Employment Act, 1959, would provide the parties to the voluntary machinery with an effective means of enforcing their agreed rates on employers who declined to pay them, since many small employers might await the finding of the Court before taking any action. They consider that the Wages Council should be continued because it afforded protection for the 9 or 10 per cent. of the workers who were outside the voluntary machinery because most of them were employed in small bakeries throughout the country. They took the view that these workers would be open to exploitation in the absence of statutory wage regulation. In forming their views they had been influenced by the consideration that in their view all the parties within the industry submitting evidence to the Commission were in favour of retention of the Baking Wages Council (Scotland). The evidence of the Independent Members of the Baking Wages Council (Scotland) they considered irrelevant to the question of the adequacy of the voluntary machinery as a means of securing the observance of agreed terms and conditions of employment. They considered that there were no grounds for disturbing the system of statutory wage regulation which was an established feature of the industry and which the parties to the voluntary machinery regarded as the basis of the development of that machinery.

#### **RECOMMENDATIONS**

51. In view of the difference of view between the members of the Commission in regard to the adequacy of the voluntary machinery, we regret that we are unable to make a unanimous recommendation. For the reasons given in paragraphs 45 to 49 above and bearing in mind the considerations set forth in Section 6 of the Wages Councils Act, 1959, the majority of us are of opinion that there is, and is likely to remain, adequate machinery set up by Agreement between organisations representing workers and employers

respectively for the effective regulation of remuneration and conditions of employment of workers within the field of operation of the Baking Wages Council (Scotland). They accordingly recommend the abolition of the Baking Wages Council (Scotland).

52. The minority of our members, for the reasons set out in paragraph 50 above, consider that the Council should be retained in view of the protection which it affords to workers employed by non-federated firms who are not parties to the voluntary agreement. Their recommendation is accordingly that the Council should continue in existence.

53. We desire to record our sincere appreciation of the efficiency and skill with which Mrs. A. A. Hamilton has discharged her duties as Secretary of the Commission. The services which she has rendered to us have proved invaluable both in the course of our investigations and in the preparation of our Report.

We have the honour to be, Sir,

Your obedient Servants,

H. S. KIRKALDY (*Chairman*).

A. D. CAMPBELL.

S. C. ORR.

W. ARMSTRONG.

B. C. WALKER.

\*J. IRVINE.

\*F. H. STEPHEN.

\* Mr. John Irvine and Mr. F. H. Stephen dissent from the Majority Recommendation of the Commission set out in paragraph 51 and support the Minority Recommendation set out in paragraph 52.

A. HAMILTON,

Secretary.

14th December, 1962.

## APPENDIX I

LIST OF ORGANISATIONS AND PERSONS WITH WHOM THERE HAS BEEN CORRESPONDENCE OR WHO HAVE GIVEN ORAL OR WRITTEN EVIDENCE

### Oral and Written Evidence

Ministry of Labour.  
Parliamentary Committee—Co-operative Union Ltd. (Scottish Section).  
Scottish Association of Master Bakers.  
Scottish Union of Bakers and Allied Workers.  
The Wholesale and Retail Bakers of Scotland.

### Written Evidence Only

Hugh Bradford and Sons.  
D. Irvine and Sons.  
McKay's Bakery.  
David Mason.  
E. Renton and Son.  
The Federation of Wholesale and Multiple Bakers  
(Great Britain and Northern Ireland).  
The National Association of Master Bakers, Confectioners and Caterers.  
The National (Home Trade) Association of Biscuit Manufacturers.  
The Union of Shop, Distributive and Allied Workers (Scottish Division).  
George Whyte.

### Oral Evidence Only

Sir David Anderson, Ph.D., F.R.S.E. (Chairman, Baking Wages Council (Scotland)).  
Professor D. J. Robertson, M.A. (Deputy Chairman, Baking Wages Council (Scotland)).  
Mrs. C. J. Tudhope, M.A., LL.B. (Independent Member, Baking Wages Council (Scotland)).

## APPENDIX II

DEFINITION OF THE BAKING TRADE AS SPECIFIED IN THE APPENDIX TO THE TRADE BOARDS (BAKING) ORDER, 1938

1. Subject to the provisions of this Appendix the Baking Trade consists of the following operations:—

- (1) the making of bread, pastry, and flour confectionery and work incidental thereto;
- (2) the making of other articles of food and work incidental thereto in an undertaking, or branch or department thereof mainly engaged on one or more of the operations specified in paragraph 1 (1);
- (3) the sale and distribution of any of the articles of food referred to in the preceding sub-paragraphs by a worker who in the same week is also engaged in any of the work specified in these sub-paragraphs

2. Notwithstanding anything in this Appendix the following operations are not operations in the Baking Trade:—

- (1) the making of biscuits in an undertaking, or a branch or department of an undertaking, mainly engaged in the making of biscuits,



and the making of any other article of food therein by workers mainly engaged in the making of biscuits:

(2) the making of any of the articles of food referred to in paragraph 1 hereof:—

(a) in an hotel, boarding house, restaurant, cafe or similar establishment:—

(i) for consumption on the premises: or

(ii) for consumption off the premises at meals served by persons ordinarily employed on the premises:

(b) by a railway undertaking for consumption on its trains, restaurant cars, ships or premises:

(3) the making of:—

(a) meat pies, sausage rolls or similar articles of pastry (including bread for use therein): or

(b) bread for use in sausages or similar articles of food in an undertaking where no bread, pastry or flour confectionery is made other than that specified in this sub-paragraph:

(4) operations included in:—

(a) the Trade Boards (Milk Distributive) Order, 1928;

(b) the Trade Boards (Sugar Confectionery and Food Preserving) Order, 1913;

(c) the Trade Boards (Grocery and Provisions) Order, 1920, or any amendments or variations of the aforesaid Orders.

3. For the purpose of this Appendix "pastry" and "articles of pastry" include articles of food made wholly or partly of pastry, "meat" includes game, poultry, egg or fish, "flour confectionery" includes cakes, oatcakes, shortbread and biscuits, "biscuits" do not include oatcakes or shortbread, and "making" includes the packing, wrapping and other handling of the articles of food when made before their first despatch for sale or distribution.

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